



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

FREDDY LUDWIG WAMBACH, §
Plaintiff, §
§
vs. § CIVIL ACTION NO. 6:09-2123-HFF-WMC
§
ATTORNEY CHEEKS, Public Defender's §
Office, TREY GOWDY, Solicitor, JUDGE §
COUCH, MARCUS W. KITCHENS, §
Clerk of Court, §
Defendants. §

ORDER

This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the Court dismiss the case without prejudice and without issuance and service of process. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August 18, 2009, and the Clerk of Court entered Plaintiff's Reply to the Report on August 25, 2009.

In his Reply, Plaintiff agreed that under *Younger v. Harris*, 401 U.S. 37, 44-45 (1971), federal courts should not interfere with ongoing state prosecutions. Thus, he asked the Court to dismiss his case without prejudice. The Court will do so.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Plaintiff's case be **DISMISSED** *without prejudice* and without issuance and service of process.

IT IS SO ORDERED.

Signed this 25th day of August, 2009, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within 30 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.